

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FRED LEE and ANNE LEE,

Plaintiffs,

vs.

UNION MUTUAL FIRE INSURANCE COMPANY,

Defendant.

**DECLARATION IN SUPPORT
OF UNION MUTUAL'S
MOTION FOR SUMMARY
JUDGMENT**

Case No.: 1:20-cv-03191- MKB-PK

CHARLES J. ENGLERT, an attorney duly admitted to practice law before this Court, under penalty of perjury and pursuant to 28 U.S.C. § 1746, declares the following to be true and correct:

1. I am an attorney at law duly licensed to practice in the State of New York and in the Eastern District of New York, and am associated with the law firm of Hurwitz & Fine, P.C., attorneys for the defendant, UNION MUTUAL FIRE INSURANCE COMPANY ("Union Mutual"), in the above-entitled action. As such, I am fully familiar with the facts and circumstances set forth herein, and submit this declaration upon my own personal knowledge of the file maintained by my office.

2. This Declaration is submitted in support of Union Mutual's motion for summary judgment against plaintiffs, Fred Lee and Anne Lee ("plaintiffs"), pursuant to Fed. R. Civ. P. 56, seeking a declaration that Union Mutual owes no coverage to the plaintiffs under the Union Mutual commercial package insurance policy issued to them based upon plaintiffs' material misrepresentations on their application and renewal applications for commercial insurance.

3. As outlined in the accompanying Rule 56 Statement of Material Facts, the Affidavit of James Lambert, and Memorandum of Law, the relevant property, 39-11 27th Street, Long Island City, New York 11101, contained three apartment units, not two apartment units, as was disclosed on plaintiffs' application and renewal applications for commercial insurance.

4. Provided with this Declaration are documents and exhibits in support of Union Mutual's Motion for Summary Judgment:

Exhibit A	Plaintiffs' complaint filed in New York State Supreme Court on June 8, 2020. (Dkt. 1a)
Exhibit B	Union Mutual's Notice of Removal filed on July 16, 2020. (Dkt. 1)
Exhibit C	Union Mutual's Answer filed on July 16, 2020 (Dkt. 4)
Exhibit D	Deposition Transcript of plaintiff Fred Lee, deposed on April 27, 2021.
Exhibit E	Deposition Transcript of James Lambert, deposed on May 4, 2021.
Exhibit F	Deposition Transcript of Fredrick Harper, deposed on June 24, 2021.

WHEREFORE, defendant, UNION MUTUAL FIRE INSURANCE COMPANY, respectfully requests that this Court grant its motion for summary judgment against plaintiffs, FRED LEE and ANNE LEE, pursuant to Federal Rule of Civil Procedure 56, declaring that the Union Mutual policies issued to plaintiffs are void *ab initio* based upon plaintiff's material misrepresentations; and declaring the Union Mutual has no obligation to indemnify plaintiff related to a March 2, 2020 fire loss at 39-11 27th Street, Long Island City, New York 11101; dismissing Plaintiffs claims alleging Union Mutual violated New York General Business Law § 349; together with such other and further relief as to this court may find just, proper and equitable, together with the costs and disbursements of this action.

DATED: Buffalo, New York
October 25, 2021

HURWITZ & FINE, P.C.

A handwritten signature in blue ink, appearing to read "Charles J. Englert", written over a horizontal line.

By: _____
Charles J. Englert, Esq.
Attorneys for Defendant
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